

No. 291.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE UNITED STATES OF AMERICA,

Plaintiffs in Error,

vs.

CHUNG SHEE, Defendant in Error.

TRANSCRIPT OF RECORD.

**In Error to the United States District Court,
Southern District of California.**

FILED

MAY 29 1896



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*In the District Court of the United States of America, in
and for the Southern District of the State of California.*

UNITED STATES OF AMERICA,	}
Plaintiff,	
vs.	}
CHUNG SHEE,	
Defendant.	

Notice of Appeal.

To George J. Denis, United States Attorney, William M. Van Dyke, United States Commissioner, E. H. Owen, Clerk of the United States District Court, and Nicholas A. Covarrubias, United States Marshal, all in and for the Southern District of the State of California, and to R. S. Williams, United States Customs Inspector in and for the Northern District of the State of California:

You will please take notice that Lum Lin Ying, charged and examined as, for and in the name of Chung Shee in the above-entitled action, by and before the Hon. William M. Van Dyke, United States Commissioner in and for the Southern District of the State of California, and by him under the complaint therein, on the 19th day of August, 1895, found and adjudged guilty of being unlawfully within the United States and ordered deported therefrom to the Empire of China, hereby appeals from said finding and order to the District Court of the United States, in and for the Southern District of the State of California, and to the Judge of said court.

You will further take notice that said appeal is taken on questions of both law and fact.

Yours, etc.,

MARBLE & PHIBBS,

Attorneys for Lum Ling Ying,

218 North Main Street,

Los Angeles, California.

Dated Los Angeles, Cal., August 19th, 1895.

[Endorsed]: 834. In the Circuit Court of the U. S. in and for the 9th Circuit before Wm. M. Van Dyke, U. S. Commissioner. The United States of America vs. Chung Shee. Notice of Appeal. Filed August 19th, 1895. Wm. Van Dyke, Commissioner of U. S. Circuit Court, Southern District of California. Marble & Phibbs, rooms 8 and 9, Lanfranco Block, 218 N. Main St., Los Angeles, Cal., Attorneys for Defendant and Appellant.

No. 771. U. S. District Court, Southern District of California.

Received copy of within notice of appeal, this 19th day of August, 1895. Wm M. Van Dyke, U. S. Commissioner. N. A. Covarrubias, U. S. Marshal, By H. T. Christian, Deputy. George J. Denis, U. S. Atty. United States of America, vs. Chung Shee. Filed August 22d, 1895. E. H. Owen, clerk.

Writ of Error.

United States of America, ss.

The President of the United States of America, to the

Judge of the District Court of the United States,
for the Southern District of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said district court before you, between The United States of America, plaintiff in error, and Chung Shee, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, and it being duly fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on Wednesday, the 25th day of March next, in the said Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid be inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 7th day of March, in the year of our Lord one thousand eight hundred and ninety-six and of the independence of the United States the one hundred and twentieth.

[Seal]

E. H. OWEN,

Clerk of the District Court of the United States for the
Southern District of California.

The above writ of error is hereby allowed.

OLIN WELLBORN,
U. S. District Judge.

[Endorsed]: United States Court of Appeals, for the Ninth Circuit. United States of America, Plaintiff in Error, vs. Chung Shee, Defendant in Error. Writ of Error.

Citation.

United States of America, ss.

To Chung Shee, and Marble & Phibbs, Esqs., her Attorneys, of Los Angeles, California, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, on the 25th day of March, A. D. 1896, pursuant to a writ of error on file in the clerk's office of the district court of the United States, for the southern district of California, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment given and rendered against the said, The United States of America in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Olin Wellborn, United States District Judge for the Southern District of California.

this 7th day of March A. D. 1896, and of the Independence of the United States, the one hundred and twentieth.

OLIN WELLBORN,

United States District Judge for the Southern District of California.

[Endorsed]: No. 771. United States Circuit Court of Appeals, for the Ninth Circuit. United States of America, Plaintiff in Error, vs. Chung Shee, Defendant in Error. Citation. Service of within citation admitted this 7th day of March, 1896. Marble & Phibbs, Attorneys for Defendant in error. Filed March 9th, 1896. E. H. Owen, Clerk.

Return to Writ of Error.

The answer of the Judge of the District Court for the Southern District of California.

The record and all proceedings of the complaint whereof mention is within made, with all things touching the same, we certify under the seal of our said District Court to the United States Circuit Court of Appeals, for the Ninth Circuit, in a certain schedule to this writ annexed.

By the Court:

[Seal]

E. H. OWEN,

Clerk.

At a stated term, to-wit, the August Term, A. D. 1895, of the district court of the United States of America, in and for the Southern District of California, held at

the courtroom thereof, in the city of Los Angeles, on Friday, the 30th day of August, in the year of our Lord one thousand eight hundred and ninety-five. Present, the Honorable Olin Wellborn, District Judge.

UNITED STATES OF AMERICA,	}	No. 771.
vs.		
CHUNG SHEE.		

Order to take Depositions.

Appeal from the order of deportation of U. S. Commissioner Van Dyke.

George J. Denis, Esq., U. S. Attorney, present for the Government; Geo. P. Phibbs, Esq., present for Defendant.

Upon reading and filing the affidavit of defendant, and upon the complaint, affidavit and papers and records in this action, it is ordered that a commission issue out of and under the seal of this court, directed to Roswell B. Lamson, United States Commissioner at Portland, Oregon, to take the testimony of Horatio Cooke, Poon See, Ng Tou Chen, G. W. P. Joseph, B. Breekman and T. J. Black, residing in said city, as witnesses on behalf of said defendant, upon such interrogatories, direct and cross as respective parties may agree upon, if the parties disagree as to their form, then the same shall be settled by the Court on September 2d, 1895, at 10:30 A. M.

It is further ordered that the trial of this cause be set for September 20th, 1895, at 10:30 A. M.

city of San Francisco, and so testified upon the proceedings below and in this paragraph mentioned. After an examination by the Collector at that port, she was refused permission to land. A writ of habeas corpus was subsequently, on July 21, 1893, issued by Judge Morrow. On the 31st of the same month, a report was filed in the case, by a special referee, recommending that the prisoner be remanded. On the 1st of August, 1893, an order, by Judge Hawley, was made, directing the return of Chung Shee to steamship Peru, to be hence taken to Hong Kong, China. On the 10th of August, 1893, at San Francisco, the United States Marshal made, upon said order, the following return: "I hereby certify that I executed the within order on the 10th day of August, 1893, by placing the within named Chung Shee on board the steamship Rio De Janeiro, bound for the port of Hong Kong." With reference to the identity of Chung Shee and this defendant there has been some conflict of testimony, but I am satisfied that the defendant is the person who, under the name of Chung Shee, sought and was denied landing at San Francisco, as testified to by the witnesses for the Government.

Third: On January 30, 1894, a petition for habeas corpus, was presented to the Honorable C. B. Bellinger, United States District Judge, for the District of Oregon, by the defendant, under the name of Lum Lin Ying, alleging: "That the facts concerning the detention of your petitioner are that T. J. Black is collector of Customs of the United States, for the District of Oregon. That the 'Signal' is a steamship plying between the port of Victoria, in British Columbia, and the port of Portland, in the

United States. That the said ship, the 'Signal,' is now under the control and in the possession of said T. J. Black as such collector. That your petitioner is the wife of a Chinese merchant by the name of Chung Chew, who is a Chinese merchant, as aforesaid, doing business in the general merchandise business at No. 64 Second street, in said city of Portland, Oregon, and he is not a Chinese laborer.

That said Chung Chew has been for more than three years last past lawfully in the United States engaged in his said business as such merchant, and has the rights under the laws of the United States and of the Treaty with the Empire of China and the United States, to remain in the United States. That said Lum Lin Ying being desirous of joining her husband Chung Chew in the United States, came to the United States, as a passenger on board the said steamer 'Signal.' That Pendergast, the master of said steamship 'Signal,' acting upon the decision of said T. J. Black, that said Lum Lin Ying had no right to land in the United States, declined and refused and still declines and refuses to permit your petitioner to land in the United States, from said steamship 'Signal,' but restrains her of her liberty on board said ship. That on the 30th day of January, 1894, said T. J. Black had a hearing before him in regard to the right of your petitioner to land in the United States, and then and there decided that your petitioner had no right to land and rejected her claim that she had such right, and upon said decision said Pendergast refused and refuses to allow your petitioner to land, as above set forth." On this petition, the writ therein applied for was issued, and on the 2nd of February the judgment of the Court was duly rendered discharging the

petitioner from the detention and restraint complained of in said petition, and thereupon she was permitted to land. The opinion of Judge Bellinger is reported in 59 Federal Reporter, page 682. Chung Chew, the alleged husband of the defendant, was at the time a merchant, residing at Portland, Oregon. For four or five months thereafter Chung Chew and the defendant lived together as husband and wife in said city, when they moved to Los Angeles, California, where they resided up to the time of Chung Chew's death, which occurred about the latter part of October, 1894. Since the date last named, the defendant, claiming to be the widow of Chung Chew, has continuously resided in Los Angeles.

My opinion is that the judgment of the district court of Oregon is conclusive of the present case. On the subject the rule of law is thus stated by an eminent text writer: "The writ of habeas corpus may be resorted to—1. By or on behalf of some person who is imprisoned or otherwise deprived of his liberty; or, 2. On behalf of some person * * * . In cases of the first class it is well settled that the remanding to custody of the person claimed to be illegally imprisoned is not a decision to which the principle of *res adjudicata* is applied. A party may apply successively to every Court having jurisdiction to grant the writ for his discharge, until he exhausts the entire judicial authority of the state. * * * If, on the other hand, the prisoner is discharged from custody, this is an adjudication that at that time he was entitled to his liberty, and is conclusive in his favor, should he be again arrested, unless some authority can be shown for holding him, which did not exist at the time of his discharge." (1 Freeman on

Judgments, Sec. 324.) Again, it has been held that in proceedings upon habeas corpus, the determination of the Court upon the facts has the effect of a verdict of a jury. (*Bonnett vs. Bonnett*, 61 Iowa, 199.) Indeed, the authorities, without exception, seem to hold that when a person has been discharged upon habeas corpus, the issues of law and fact involved are *res adjudicata*, and the person so discharged cannot, from the same cause, be again lawfully arrested. (*Church on habeas corpus*, Sec. 386; *Ex Parte Jilz*, 64 Mo., 205, s. c. 27 Amer. Rep., 218; *In re Crow*, 60 Wis., s. c. 19 N. W. Rep., 713; *Yates' case*, 6 Johns., 337.) On this point the Government contends that, "in the federal courts, the doctrine of *res adjudicata* is not applicable to a decision in a habeas corpus proceeding," and cites, as authorities, *Ex Parte Kane*, 3 Blatchf., 5, and *Ex Parte Cuddy*, 40 Fed. Rep., 65. These cases, however, so far from sustaining, are against the Government's contention. In the first, the Court, after declaring that in proceedings upon a writ of habeas corpus, the federal courts follow, not the laws and regulations of the States, but the common law of England, proceeds thus: "That according to that system of laws, so guarded is it in favor of the liberty of the subject, the decision of one Court or magistrate, upon the return to the writ, refusing to discharge the prisoner, is no bar to the issuing of a second or third or more writs by any other Court or magistrate having jurisdiction of the case." Thus it will be seen from this opinion that it is only when the prisoner is remanded that the decision of the Court is not final. The same may be said of *Ex Parte Cuddy*, *supra*. From the opinion of Justice Field in this last case, the following

quotation is made in the Government's brief: "The doctrine of *res adjudicata* was not held applicable to a decision of one Court or justice thereof; the entire judicial power of the country could thus be exhausted." The latter part of this quotation would be meaningless, except upon the idea that Justice Field was discussing a case wherein the prisoner was remanded. The same is true of the opinion of the Court *In re Perkins*, 2 Cal., 430, cited in the Government's brief. While, therefore, these decisions do not expressly so hold, the implication from them is unavoidable, that, where, on a writ of habeas corpus, the prisoner is discharged, the decision is a final determination in his or her favor.

The further argument of the Government, in this connection is (page 5 of its brief) that the decision of a collector, denying an alien admission into this country, is similar to an order, upon preliminary examination, discharging or committing a person accused of crime. With this argument I cannot agree. The order of a committing magistrate does not purport to determine the question of innocence or guilt and therefore, the discharge of the accused, whether at the preliminary examination or a review upon habeas corpus does not, of course, bar subsequent inquiry, indictment or trial. It was to this situation that the Supreme Court of South Carolina referred, in the case of *State vs. Fley* (2 Brevard, S. C., 338; s. c. 4 Am. Dec. 583), in the quotation made, at page 6 in the Government's brief, where the Court declared that it would be monstrous to say that the discharge of a prisoner upon habeas corpus shielded him from subsequent prosecution. The determination, however, of an alien's claim

to enter the United States, is wholly different. When the power and duty of so determining are committed to any officer, no matter whether such officer belongs to the executive or judicial branch of the Government, the decision of such officer is an adjudication of the right involved, namely, the right of the alien to enter the country, and such adjudication is final, unless the law expressly or impliedly provides for an appeal from or review of the decision. And this is the doctrine of the case which the Government invokes to the support of its argument, *In re Day*, 27 Fed Rep., 678. In that case, the Court says: "The provisions above quoted manifestly impose upon the commissioners the duty of determining the facts upon which the refusal of the right to land depends. The general doctrine of the law in such cases is that where the determination of the facts is lodged in a particular officer or tribunal, the decision of that officer or tribunal is conclusive, and cannot be reviewed except as authorized by law."

The Court then proceeds to hold that the Act of August 3, 1882, does not authorize any review, by habeas corpus, or otherwise, and that the decision of the commissioners is final and conclusive. This case, therefore, so far from upholding, is directly against the Government's contention on the point in question. I would say here, in passing, that, under the Chinese exclusion acts, I think the decision of the Collector of Customs is not final, but that the truth of the matter may be determined on habeas corpus or in a proceeding against such persons for being unlawfully in the country. (*U. S. vs. Loo Way*, 68 Fed. 475.) This rule, however, has been so changed by act of congress, that now the decision of the Collector of Customs, if ad-

verse to the alien, is final, unless reviewed on appeal by the Secretary of the Treasury. (28 U. S. Stat. at L. 390.)

In opposition to the conclusiveness of the Oregon judgment, in favor of the defendant, the Government further contends that the refusal of our Government to allow aliens to enter or remain in this country is an exercise of political power, and therefore, the doctrine of *res adjudicata* does not apply to the determinations of any of the officers or tribunals under and pursuant to exclusion acts of congress. This contention does not seem to me to be well founded. While it is true that the exclusion of foreigners is an exercise of political sovereignty, yet, where a general law has been passed for that purpose, the application of such law to individual cases is essentially a judicial function, and I can see no reason why the principle of *res adjudicata* should not be applied. Indeed, that the principle does not apply to such cases is the sole question decided in the Day case, *supra*. There the Court dismissed a writ of habeas corpus, on the ground that the decision of the commissioners, refusing to allow certain foreigners to come into the country, was final, and that the matter could not be made the subject of any subsequent inquiry. By reference to the decision in that case, it will be seen that a large number of authorities are cited in its support.

The further argument of the Government, that the Oregon judgment does not cover the issues involved in this proceeding, seems to me equally untenable. Whatever may have been the reasoning of Judge Bellinger in his opinion, the judgment of the Court, upon the petition of the writ of habeas corpus, as found in the transcript of the

record in evidence, was as follows: "This cause was heard upon the petition and the testimony, the petitioner, appearing by Mr. B. B. Beekman and Mr. G. W. P. Joseph, of counsel, and the United States, intervening herein, by Mr. Daniel R. Murphy, United States Attorney, and the Court being now fully advised in the premises, it is ordered and adjudged that the prayer of said petition be granted and that said petitioner be and she is hereby discharged from the detention and restraint complained of in said petition." The precise question passed upon by Judge Bellinger was the right of the defendant to enter and remain in the United States, and he unquestionably had jurisdiction to hear and determine the matter. This point has been expressly decided by the Supreme Court of the United States. Judge Blatchford, delivering the opinion, says: "It is contended for the United States that there is no jurisdiction in the district court to issue the writ in the first instance, because the party was not restrained of his liberty within the meaning of the Habeas Corpus Statute. It is urged that the only restraint of the party was that he was not permitted to enter the United States. But we are of opinion that the case was a proper one for the issuing of the writ. The party was in the custody. The return of the master was that he held him in custody by direction of the custom authorities of the port, under the provisions of the Chinese Restriction Act.

That was an act of congress. He was, therefore in custody under or by color of the authority of the United States, within the meaning of section 753 of the Revised Statutes. He was so held in custody on board of a vessel within the city and county of San Francisco. The case was

one falling within the provisions of chapter 13 of title 13 of the Revised Statutes. It is also urged that if the right to issue the writ existed otherwise, under the general provisions of the Revised Statutes, that right was taken away by the Chinese Restriction Act, which regulated the entire subject matter, and was necessarily exclusive. * *

* We see nothing in these acts which in any manner affects the jurisdiction of the courts of the United States to issue a writ of habeas corpus. On the contrary, the implication of section 12 is strongly in favor of the view that the jurisdiction of the courts of the United States in the premises was not intended to be interfered with.

That section provides that 'Any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came

* * * after being brought before some justice, judge, or commissioner of the United States and found to be one not lawfully entitled to be or remain in the United States.' So that if it were to be claimed by the United States that Jung Ah Lung, if at any time he should be found here, was found unlawfully here, he could not be removed to the country from whence he came, unless he were brought before some justice, judge, or commissioner of a court of the United States, and were judicially found to be a person not lawfully entitled to be or remain here. This being so, *the question of his title to be here can certainly be adjudicated by the proper court of the United States, upon the question of his being allowed to land.*" (United States vs. Jung Ah Lung, 124 U. S., 621; XXXI: 593.) Just such an adjudication as that here described was had in the case of the defendant at Portland, Oregon, upon the writ of

habeas corpus already mentioned. Defendant's "title to be here" was then "adjudicated by the proper court of the United States," and "upon the question or her being allowed to land."

The Government, however, insists that the Oregon judgment was obtained through fraud, and is, therefore, open to collateral attack, and cites to this point, among other cases, *United States vs. Throckmorton*, 98 U. S., 61-67; XXV: 93. I cannot so find or hold. If fraud was practiced upon the Court, it consisted wholly in the introduction of false testimony, and it is well settled that this is no ground for vacating a judgment. Such was the express holding of the Court in *United States vs. Throckmorton*, *supra*. Mr. Justice Miller, delivering the opinion of the Court, says: "Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced upon him by his opponent, as by keeping him away from court, a false promise of compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat or where the attorney regularly employed corruptly sells out his client's interest to the other side—these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decreé, and open the case for a new and fair hearing. See *Wells*, *res adjudicata*, Sec. 499; *Pearce v. Olney*, 20 Com., 544; *Wierich v. De Zoya*, 7 Ill. (2 Gilm.) 385; *Kent v. Ricards*, 3 Md. Ch., 396; *Smith v.*

Lowry, 1 Johns, Ch. 320; *De Louis v. Meek*, 2 Green (Iowa), 55. In all these cases, and many others which have been examined, relief has been granted on the ground that by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the Court. On the other hand the doctrine is equally well settled that the Court will not set aside a judgment because it was founded on a fraudulent instrument, or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed. Mr. Wells in his very useful work on *res adjudicata* says, Sec. 499: "Fraud vitiates everything, and a judgment equally with a contract, that is, a judgment obtained directly by fraud, and not merely a judgment founded on a fraudulent instrument; for, in general, the Court will not go again into the merits of an action for the purpose of detecting and annulling the fraud. * * * The maxim that fraud vitiates every proceeding must be taken, like other general maxims, to apply to cases where proof of fraud is admissible. *But where the same matter has been actually tried, or so in issue that it might have been tried, it is not again admissible*; the party is estopped to set up such fraud, because the judgment is the highest evidence, and cannot be contradicted. * * * We think these decisions establish the doctrine on which we decide the present case, namely, that the acts for which a court of equity will, on account of fraud, set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first court and not

to a fraud in the matter on which the decree was rendered. That the mischief of retrying every case in which the judgment or decree, rendered on false testimony, given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, and which are afterwards ascertained to be forged or fraudulent, would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases."

Recognizing and applying the principle enunciated in the foregoing extracts from *United States vs. Throckmorton*, *supra*, I cannot do otherwise than hold that no such fraud has been shown in the present case as invalidates the judgment of the Oregon court. Whether that court was misled by false testimony or erred in its conclusions of law, are questions not here open to inquiry. It is to be presumed, in favor of its judgment, that the evidence required by law, as to the right of the defendant to come into the United States, was adduced upon the hearing. That judgment cannot be collaterally assailed in this proceeding, and must be held to establish the lawfulness of the defendant's residence in the United States.

This ruling renders it unnecessary to decide the other points submitted in defendant's brief.

The judgment and order of the commissioner will be reversed, and the defendant discharged.

[Endorsed]: No. 771. U. S. District Court, Southern District of California. *United States v. Chung Shee*. Opinion of the Court. Filed December 2d, 1895. E. H. Owen, Clerk.

Affidavit of Complaint.

United States of America,)
 Southern District of California. } ss.

Be it remembered, that on this 31st day of July, in the year of our Lord one thousand eight hundred and ninety-five, before me, William M. Van Dyke, a Commissioner duly appointed by the Circuit Court of the United States of America, for the Southern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, etc., pursuant to the acts of congress in that behalf, personally appeared R. S. Williams, who, being duly sworn according to law, deposes and says that as he is informed and believes and therefore alleges the fact to be Chung Shee heretofore, to-wit, on the 16th day of June in the year of our Lord one thousand eight hundred and ninety-three, and within the jurisdiction of the United States aforesaid, and of this Honorable Court, and after the passage by the congress of the United States of an act entitled: "An Act to amend an Act entitled 'An Act to execute certain treaty stipulations relating to Chinese, approved May sixth, eighteen hundred and eighty-two,'" one Chung Shee (a Chinese woman) did come into the United States from a foreign place, and, having come, has remained within the United States; that the said Chung Shee has been found and now is unlawfully within the United States, and that at all the times herein mentioned the said Clrung Shee was and is a Chinese laborer, contrary to the form of the Statutes of

the United States in such case made and provided, and against the peace and dignity of the said United States.

R. S. WILLIAMS.

Sworn to and subscribed, this 31st day of July A. D. 1895, before me.

WM. M. VAN DYKE,

U. S. Commissioner.

E. H. Owen.

[Endorsed]: No. 834. U. S. Circuit Court, Southern District of California. The United States of *California* vs. *Chung Shee*. Copy Affidavit of Complaint. George J. Denis, U. S. Attorney.

[Endorsed]: Filed the 31st day of July, 1895. Wm. M. Van Dyke, U. S. Commissioner.

No. 771. U. S. Dist. Court, So. Dist. of Cal. Filed Aug. 22d, 1895. E. H. Owen, Clerk.

Warrant to Apprehend.

Southern District of California, ss.

The President of the United States of America, to the Marshal of the United States, for the Southern District of California, and to his deputies, or any or either of them, Greeting:

Whereas, complaint on oath hath been made to me charging that *Chung Shee*, on or about the 16th day of June, in the year of our Lord one thousand eight hundred and ninety-three, and within the jurisdiction of the

United States, and within the jurisdiction of the Honorable, the Circuit Court of the United States, of the Ninth Circuit, in and for the Southern District of California and after the passage by the congress of the United States of an act entitled: "An Act to amend an Act entitled 'An Act to execute certain treaty stipulations relating to Chinese, approved May sixth eighteen hundred and eighty-two,'" one Chung Shee (a Chinese woman) did come into the United States from a foreign place, and having come has remained within the United States; that the said Chung Shee has been found and now is unlawfully within the United States, and that at all the times herein mentioned the said Chung Shee was and is a Chinese laborer.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Chung Shee and bring her body forthwith before me, a Commissioner appointed by the Circuit Court of the United States, for the Southern District of California, at my office, at the city of Los Angeles, that he may then and there be dealt with according to law for the said offence.

Given under my hand, this 31st day of July, in the year of our Lord one thousand eight hundred and ninety-five, and of our Independence the one hundred and 20th.

WM. M. VAN DYKE,

Commissioner of the U. S. Circuit Court for the Ninth Circuit, in and for the Southern District of California.

In obedience to the within warrant, I have the body of

Chung Shee before Wm. M. Van Dyke, Esq., U. S. Commissioner, this 31st day of July, 1895.

N. A. COVARRUBIAS,

U. S. Marshal,

By W. J. Oaks, Deputy.

[Endorsed]: No. 834. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. Chung Shee. Copy Warrant to Apprehend. George J. Denis, U. S. Attorney.

[Endorsed]: Filed this 3rd day of August A. D. 1895. Wm. M. Van Dyke, U. S. Commissioner.

No. 771. U. S. District Court, So. Dist. of Cal. Filed Aug. 22, 1895. E. H. Owen, Clerk.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial Circuit,
Southern District of California.*

Before Wm. M. Van Dyke, United States Commissioner,
Los Angeles, California.

UNITED STATES OF AMERICA,

vs.

CHUNG SHEE,

} No. 834.

Findings, Order and Judgment.

Whereas, Chung Shee stands charged on oath before me, Wm. M. Van Dyke, a Commissioner duly authorized and

empowered by the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Southern District of California, to take affidavits and bail in civil causes depending in the courts of the United States, and to execute all the powers and perform all the duties conferred, required or authorized by any act of congress now in force or may hereafter be passed, as follows, to-wit: That within the jurisdiction of the United States aforesaid and of this Honorable Court, and after the passage by the congress of the United States of an act entitled "An Act to amend an act entitled 'An Act to execute certain treaty stipulations relating to Chinese, approved May 6, 1882,'" she, the said Chung Shee, did come into the United States from a foreign place, and, having come, has remained within the United States; that the said Chung Shee has been found and now is unlawfully within the United States, and that at all the times herein mentioned, the said Chung Shee is and was a Chinese laborer, and

Whereas, the said Chung Shee was duly apprehended upon said charge in the Southern District of California, and

Whereas, an examination was thereupon had by me of said Chung Shee upon the said charge, from which examination and from the evidence adduced before me, it appears to me that the said Chung Shee, is, by race, language, color and dress, a Chinese person and a laborer by occupation, and

Whereas, said Chung Shee has failed to establish by affirmative proof to my satisfaction her lawful right to remain in the United States, and

Whereas, said Chung Shee has not made it appear to

me that she is a subject or citizen of any other country than China, and

Whereas, from the foregoing facts I find and adjudge said Chung Shee to be unlawfully within the United States,

Now, therefore, I order that said Chung Shee be removed from the United States to China, and I order that said deportation of the said Chung Shee be made from the port of San Francisco, within the limits of the Northern District of California, and I further order that said Chung Shee be and she is hereby committed to the United States marshal for the southern district of California for the purpose aforesaid.

WM. M. VAN DYKE,

Commissioner of U. S. Circuit Court, 9th Judicial Circuit,
Southern District of California.

Los Angeles, California, August 19th, 1895.

[Endorsed]: No. 834. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. Chung Shee. Copy Findings Order and Judgment.

No. 771. U. S. District Court, So. Dist. of Calif. Filed Aug. 22, 1895. E. H. Owens, Clerk.

At a stated term, to-wit, the August Term A. D. 1895, of the District Court of the United States of America, in and for the Southern District of California, held at the courtroom thereof in the city of Los Angeles, on Tuesday, the 26th day of September, in the year of

our Lord one thousand eight hundred and ninety-five.
Present, the Honorable Olin Wellborn, District
Judge.

UNITED STATES OF AMERICA,	}	No. 771
vs.		
CHUNG SHEE.		

Minutes of Trial.

Violation of the Chinese Exclusion Act.

George J. Denis, Esq., U. S. Attorney, and Frank G. Finlayson, Esq., Assistant U. S. Attorney, present for the Government; Defendant in court in custody of the U. S. marshal, with her attorneys, Marble & Phibbs, Esqs.

This cause coming on regularly at this time and respective counsel announcing themselves as ready, it is ordered that the trial and hearing proceed; Counsel for defendant now make a motion for and a demand for a jury, which demand is refused and to which ruling defendant excepts. On motion of defendant's attorneys, John B. Campbell is sworn to take the testimony and proceedings herein. John H. Wise is called, sworn and testifies for the United States; Thomas D. Riordan and H. S. Huff are called, sworn and testify for the United States; thereupon the U. S. attorney rests his case. Counsel for defendant offer in evidence judgment roll from U. S. District Court of Oregon, in case of United States vs. Lun Yin Ling which is admitted and filed as defendant's exhibit "1"; also certain depositions taken at the city of Portland, Oregon. Ah Fawn is called by the defendant and sworn as interpreter of the Chinese and English languages. Fong Que is called, sworn and

testifies for the defendant through said interpreter; also Wong Gock and Mrs. Wong Chung are sworn and testify for the defendant through the said interpreter. Defendant's counsel offer in evidence the order of deportation of date August, 1893, made in San Francisco, and the return thereon, which is admitted and filed in evidence. Chung Shee, the defendant, is called, sworn, and testifies in her own behalf. J. H. Wise is recalled and testifies, and Government's Exhibit "1" is offered, admitted and filed (being photo. of deft.). There being no further testimony, the case is submitted with leave to file briefs in such time as counsel may agree upon.

At a stated term, to-wit, the August Term A. D. 1895, of the District Court of the United States of America, in and for the Southern District of California, held at the courtroom thereof in the city of Los Angeles, on Monday, the 2nd day of December, in the year of our Lord one thousand eight hundred and ninety-five. Present, the Honorable Olin Wellborn, District Judge.

UNITED STATES OF AMERICA, }
vs. } No. 771.
CHUNG SHEE, }

Judgment Discharging Defendant.

Violation of Chinese exclusion act (Chinese laborer unlawfully within the United States).

George J. Denis, Esq., U. S. Attorney, and Frank G. Finlayson, Esq., Assistant U. S. Attorney present for the

Government; Marble & Phibbs, Esqs., present for defendant.

This cause having been heretofore tried and submitted to the Court for its consideration and decision, and the Court having fully considered the same, now renders its written opinion and orders that the judgment and order of the Commissioner be reversed and that defendant be discharged.

In the District Court of the United States, in and for the Southern District of California.

UNITED STATES OF AMERICA,	}	No. 771.
vs.		
CHUNG SHEE.		

Certificate to Judgment Roll.

I, E. H. Owen, Clerk of the District Court of the United States, in and for the Southern District of California, do hereby certify that the foregoing papers hereto annexed, constitute the Judgment Roll in the above-entitled cause.

Attest my hand and the seal of said court this 2nd day of December A. D. 1895.

[Seal]

E. H. OWEN,
Clerk.

[Endorsed]: No. 771. U. S. District Court, Southern District of California. United States of America vs. Chung Shee. Judgment Roll. Filed December 2d, 1895. E. H. Owen, Clerk.

At a stated term, to-wit, the August Term A. D. 1895, of

the District Court of the United States of America, in and for the Southern District of California, held at the courtroom thereof in the city of Los Angeles, on Thursday, the 2nd day of January in the year of our Lord one thousand eight hundred and ninety-six. Present, the Honorable Olin Wellborn, District Judge.

UNITED STATES OF AMERICA, }
vs. } No. 771.
CHUNG SHEE. }

Order Extending Time.

Violation of the Chinese Ex. Act. On Appeal from Order deportation by U. S. Commissioner Van Dyke.

Frank G. Finlayson, Esq., Acting U. S. Attorney, present for the Government; on motion of counsel for the Government it is ordered that defendant be allowed ten days within which to file proposed amendments to plaintiff's bill of exceptions and that thirty days thereafter be allowed within which to settle, approve and file said bill.



At a stated term, to-wit, the August Term A. D. 1895, of the District Court of the United States of America, in and for the Southern District of California, held at the courtroom thereof in the city of Los Angeles, on Friday, the 10th day of January, in the year of our Lord one thousand eight hundred and ninety-six. Present, the Honorable Olin Wellborn, District Judge.

UNITED STATES OF AMERICA,	} No. 771.
vs.	
CHUNG SHEE.	

Violation of Chinese Exclusion Act.

Order Extending Time.

Frank G. Finlayson, Esq., Acting U. S. Attorney, present for the Government. Marble & Phibbs, for Defendant.

Good cause appearing therefor, it is ordered that five days additional time be allowed defendant within which to serve and file proposed amendments to plaintiff's proposed bill of exceptions, and that 60 days thereafter be allowed within which to settle, sign and file the bill of exceptions.

In the District Court of the United States, for the Southern District of California.

UNITED STATES OF AMERICA,	} No. 771.
Plaintiff,	
vs.	
CHUNG SHEE,	}
Defendant.	

Bill of Exceptions.

Be it remembered that on the 26th day of September, in the year of our Lord one thousand eight hundred and

ninety-five, before me, Olin Wellborn, Judge of the United States District Court, for the Southern District of California, sitting as such judge, this cause, on appeal from the order and judgment of Wm. M. Van Dyke, Esq., United States Commissioner for said district, came on regularly for trial, George J. Denis, Esq., United States Attorney for the Southern District of California, appearing on behalf of the Government, and Messrs. Marble & Phibbs appearing for the defendant, whereupon the record on said appeal showed and proved the following facts, to-wit:

On the 31st day of July, 1895, a complaint was duly sworn to and verified by one R. S. Williams, before said Wm. M. Van Dyke, United States Commissioner, as aforesaid, and filed with said commissioner, alleging that Chung Shee, a Chinese woman, did, on the 16th day of June, 1893, come into the United States from a foreign place, and, having come, has remained within the United States, and that said Chung Shee has been found, and, at the date of filing said complaint, was unlawfully within the United States, and that at all the times in said complaint mentioned she was a Chinese laborer, contrary to the form of the statutes of the United States in such case made and provided, and against the peace and dignity of the said United States;

That thereupon and on said 31st day of July, 1895, a warrant, in due form, was issued by said commissioner for the arrest of said Chung Shee, commanding the marshal of said district to bring her forthwith before said commissioner;

That said marshal, pursuant to said warrant, arrested

the defendant herein on said 31st day of July, 1895, and brought her before said commissioner, whereupon, upon arraignment, she gave her true name as Lum Lin Ying;

That on the 9th day of August, 1895, a trial of said defendant upon said complaint was had before said commissioner, at his office in the city of Los Angeles, State of California, George J. Denis, United States Attorney, appearing on behalf of the Government, and Messrs. Marble & Phibbs on behalf of the defendant, whereupon witnesses on behalf of the Government were examined and testified, and the cause submitted to the commissioner for his decision;

That on the 19th day of August, 1895, the said commissioner gave, made and filed in writing his findings, order and judgment in said cause, wherein and whereby said commissioner did expressly find that at the time of filing said complaint and of the rendition of said judgment, said defendant was, by race, language, color and dress, a Chinese person, and a laborer by occupation; that she had failed to establish, by affirmative proof, to the satisfaction of said commissioner, her lawful right to remain in the United States, and said commissioner did find and adjudge said defendant to be unlawfully within the United States, and did order that said defendant, whose name in said order was recited as Chung Shee, be removed from the United States to China, it not appearing that she was a subject or citizen of any other country than China, and did further order that said deportation of said defendant be made from the port of San Francisco, within the limits of the northern district of California, and did further order that said defendant be and she was committed to the

custody of the United States Marshal for the southern district of California for the purposes of said deportation;

That thereafter, to-wit, on the 22nd day of August, 1895, said defendant duly appealed from said findings, order and judgment of said commissioner to me, Olin Wellborn, the Judge of said district court;

That on the 26th day of September, 1895, the said cause, on appeal as aforesaid, came on regularly for hearing before me, the said Olin Wellborn, sitting as said judge, in the district court of the United States, for the southern district of California, whereupon the following proceedings were had and the following testimony given:

JOHN H. WISE, called, sworn and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Denis:

I reside in San Francisco, and am the collector of the port of that city in that district and have been such collector since the first of January, 1893; I recollect an application to land by a Chinese woman known as Chung Shee, made shortly after I took the office of collector. I saw her in the room of Commissioner Heacock. I see her now in this courtroom sitting next to her counsel. I remember the action I took as to her landing. I denied her landing. After such denial I saw her in the room of Commissioner Heacock. I do not remember seeing her after that trial. I saw her during the trial.

Cross-Examination.

By Mr. Phibbs:

I do not think it was in the month of June that I saw

this woman in San Francisco; it was a month or two after that; I do not remember the date, but I saw her perhaps a dozen times. The first time I saw her was on board of ship. I forget the name of the ship now; I do not remember; I didn't change my mind; the ship was in the port of San Francisco; I think it was about August, 1893; I am not positive about the date. The first time I saw her after seeing her aboard the ship was in court, the date of which I am not certain about. Afterwards there was an appeal taken on my decision. I cannot fix the time; I imagine it was two or three weeks after I saw her on board of the vessel. I do not know the exact time I saw her, except during that trial.

Q. Then you saw her but twice?

A. I don't say that. I think I saw her three or four times.

Q. Now, then, you have detailed to us seeing her twice; now tell us where you saw her the third and the fourth time?

A. I saw her perhaps twice or three times at the steamer, and certainly one time at it, and I think twice at Judge Hancock's court. That is the extent of the acquaintance I had with the woman, whom I designate as the woman, Chung Shee. I have seen her since I saw her in Judge Heacock's court.

Q. Where?

A. Here. This is the woman here; I can't explain how I happen to know particularly that she is the woman. Judge Hornblower was a witness in that case and I went over to Judge Heacock's court and I don't generally do this, to have this girl deported, and I watched her very

carefully, took careful notice of her and I impressed her upon my mind. I had a controversy with Judge Hornblower who swore to the document and said he didn't swear to it as being this woman and that impressed that fact on my mind. That is what particularly impressed the fact upon my mind that this is the woman.

Q. By seeing her the number of times you have stated?

A. Yes, sir.

Q. Then you have not seen her since you saw her in San Francisco, in 1893, until the present time?

A. No, sir. I don't think I can be mistaken about this being the woman; I am absolutely certain that this is the same woman; there is no doubt in my mind. I have not come in contact with a great many Chinese women who looked so much alike that one could scarcely tell them apart. I can't say that I have seen them of that kind. I have never seen a Chinese woman that I wanted to identify; I made up my mind that I wanted to distinguish, and I could always tell them from any body else. This particular girl I made up my mind that I wanted to identify and very soon afterwards I heard that she had been landed in the United States again and I have remembered her particularly. This was at the time I last saw her; there was a great fight to land this girl at the time. From information from the marshal, it occurred to me very soon after the trial that there had been some change made about her—I can't prove that fact. I kept my eye on the girl after the Judge had decided that she was to be deported; I had been informed indirectly that this girl was going to be substituted for another girl and I kept my eye

on her, and news came to me after the steamer had left that she hadn't gone. Now, she may have gone to Portland, I don't know whether she did or not; I can't prove that fact. I had been informed very soon after that she that was ordered deported and she is here. I know that whether that was true or not, however; this is the girl that was ordered deported and she is here. I know that she is the same one from the fact that I saw her at San Francisco at the time I saw her on the vessel and in the United States court. This is the only acquaintance I had with her at any time and have never seen her since except at this court.

THOMAS D. RIORDAN called, sworn and examined, as a witness, in behalf of the plaintiff, testified as follows:

By Mr. Denis:

I am and have been a member of the bar for 16 years, and am practicing in San Francisco, and was during the whole of 1893. I have seen that Chinese woman (indicating defendant) before. I couldn't give you just the dates. I saw her before Judge Hancock, the Commissioner of the United States Circuit Court. I was acting as her attorney, trying to obtain her landing in the United States, on the ground that she was the wife of a Chinese merchant of San Francisco. I heard her testify on that occasion. I remember in general her testimony; I can't give you the details of it. I remember her testifying that she was the wife of a Chinese merchant of San Francisco, what firm or business he was engaged in I can't recollect. The distinguishing feature in this case was that she had one child by her husband and I forget what she testified as to the

sex of the child, but the testimony of her husband as to the sex of the child was exactly the reverse, in other words, if the one testified that it was a male, the other testified that it was a female. I withdrew from the case and substituted another attorney.

No cross-examination.

H. S. HUFF; called, sworn and examined on behalf of the plaintiff, testified as follows:

By Mr. Denis:

I reside in San Francisco and have lived there mostly all my life. In June, 1893, I was the official interpreter of court, for the northern district of California. In the Chinese language, which I speak, I have examined all cases of applicants for admission to the United States from China, and from the Chinese steamers in the port of San Francisco, that have been in the United States court since 1891, and for about a year and a half I examined all of the Chinese applying to the collector, and also to the Court. I examined them, acted as interpreter to find out what their statements were prior to landing and to report it to the Collector of Customs, who acted on it to suit himself. Those were my functions in June and July, 1893. I remember this Chinese woman very well. I think it was in June, 1893, I first met her on the steamer "Peru," which was a large vessel from China, and I remember her a few day afterwards, after a writ was taken out in her behalf, and I acted as interpreter at that time, a day or two afterwards, interpreting for her about two hours. The steamer "Peru" plied between Hong Kong, Yokohama and San Francisco, I believe. I boarded the steamer in San Fran-

cisco and examined all the passengers on board, of whom this woman was one. I spoke to her in Chinese at that time, and asked her upon what ground she claimed a right to land. I can't remember the whole statement. She claimed to be the wife of a merchant doing business on Jackson street in the city of San Francisco. The Collector examined her. I was present at the investigation that occurred under Commissioner Heacock in the circuit court room. Collector Wise examined Judge Hornblower and the witnesses very carefully. The witnesses I refer to were witnesses for her, that wanted to show to the collector that she had a right to land. I suppose I saw her a half a dozen times on the steamer and three or four or a half a dozen times during the investigation. I saw her in the United States commissioner's courtroom, special referee Heacock, on several occasions. I interpreted her statements to Commissioner Heacock and remember the substance of her testimony. It was a notorious case on account of Judge Hornblower, who testified on behalf of the woman and impressed it upon my memory. I remember her testifying about the sex of her child. She testified that she had one child and I believe it died a month or some short time after birth and she testified as to the sex of the child and I remember the husband testifying that the child was of the opposite sex. She testified that the child was of one sex, and subsequently the husband testified that the child was of a different sex. The result of that judicial inquiry was that she was recommended to be deported by the commissioner. The collector has the evidence upon which she was refused landing. Special Commissioner Heacock was appointed a special referee and

he recommended that the woman be refused landing. The case was appealed to the district Judge Hawley, and on this case Judge Hornblower was a witness and Judge Hawley also ordered her to be remanded as reported by the commissioner. I did not see her in San Francisco after the hearing before Commissioner Heacock.

Cross-Examination.

By Mr. Marble:

I had been interpreter on the steamers coming into San Francisco a year, perhaps, partially in the office of Collector Wise and in that of his predecessor. I interpreted on every steamer from every foreign port, one steamer would bring 600 or 700 and 200 or 300 Chinese passengers. Along about this time they were thinning out. There were several thousand that came during this period. There was the Chicago Fair that brought a good many, 4,000 or 5,000, maybe more. I don't remember particularly every Chinese person that came in during that period, but in this particular case I remember very well. I can't state how many Chinese people were on the steamer "Peru" at the time I had the conversation with this defendant; I don't remember the number of passengers. I remember this woman, because she was an unusually pretty woman and some prominent citizens appeared in her behalf. I don't know why I can't remember some other Chinese people that came in on the steamer "Peru" at that time. The "Peru" was in several times during my term, and I can't recall the number of passengers coming in at that time. I should guess several hundred. I can't say that I can recall any one Chinese passenger that came in on the steam-

er "Peru" at the time defendant came, nor can I remember the month in which defendant. I never can forget that woman, having talked with her for two hours, and in the court subsequently too.

Q. Now, you say you went on the steamer and saw her in the port of San Francisco? A. Yes, sir.

Q. When did you next see her?

A. I saw her in the County Jail, here today.

Q. That is the next time that you saw her?

A. I think I saw her in the marshal's office on several occasions, that is, in the marshal's office in San Francisco.

Q. How long before that?

A. Just before she was deported.

Q. But for a period of two years you have not seen her?

A. No, sir, in that neighborhood; I couldn't say exactly.

Q. Well, about? A. About two years.

Q. You simply remember from the circumstances that occurred at that time, do you not?

A. Yes, sir; her features. She was a very pretty woman, and I remember her too on account of the freckles. She seemed inclined to be a Portuguese.

Q. Aren't Chinese women freckled?

A. They usually are not.

Q. You wouldn't say that you know this woman from the fact of there being freckles on her face?

A. No, the examination of her eyes. No doubt about her being the same woman to my mind.

Q. Now, isn't it a fact that the Chinese people have freckles ordinarily?

A. They don't show on account of the darkness of their skin.

The plaintiff rested. Whereupon the defendant introduced on her behalf the following proofs and testimony, as follows:

“Judgment roll in the matter of Lum Lin Ying. In the United States district court, in and for the district of Oregon, introduced and received in evidence, by which said judgment roll, among other things, appears that on the 30th day of January, 1894, a petition, in said court, was filed on behalf of defendant, which said petition is in words and figures following, to-wit:

“In the District Court of the United States, for the District of Oregon.

“In the Matter of the Petition of Lum }
Lin Ying for a Writ of Habeas Corpus. }

“To the Hon. C. B. Bellinger, Judge:

“The petition of Lum Lin Ying, in the city of Portland, district of Oregon, respectfully shows to your Honor:

“That your petitioner is not detained in jail, and is not in custody in or by color of authority of the United States and has not been committed for trial by any court thereof, and is not in custody for any act done or omitted in pursuance of any law of the United States or of any order, process, or decree of the court of judge thereof.

“That the facts concerning the detention of your petitioner, are that T. J. Black is Collector of Customs of the United States, for the district of Oregon.

“That the ‘Signal’ is a steamship plying between the port of Victoria in British Columbia, and the port of Portland in the United States.

“That the said ship ‘Signal’ is now under the control and in the possession of said T. J. Black as such collector.

“That your petitioner is the wife of a Chinese merchant by the name of Chung Chew, who is a Chinese merchant as aforesaid, doing business in the general merchandise business at No. 64 Second street in said city of Portland, Oregon, and he is not a Chinese laborer.

“That said Chung Chew has been for more than three years last past lawfully in the United States engaged in his said business as such merchant, and has the right under the laws of the United States and of the treaty with the empire of China and the United States to remain in the United States.

“That said Lum Lin Ying being desirous of joining her husband, Chung Chew, in the United States, came to the United States as a passenger on board the said steamer ‘Signal.’

“That Pendergast, the master of said steamship ‘Signal,’ acting upon the decision of said T. J. Black, that said Lum Lin Ying had no right to land in the United States, declined and refused and still declines and refuses to permit your petitioner to land in the United States, from said steamship ‘Signal,’ but restrains her of her liberty on board said ship.

“That on the 30th day of January, 1894, said T. J. Black had a hearing before him in regard to the right of your petitioner to land in the United States, and then and there decided that your petitioner had no right to land and rejected her claim that she had such right, and upon said decision said Pendergast refused and refuses to allow your petitioner to land, as above set forth.

“That said T. J. Black refused to hear any other testimony than that of said Lum Lin Ying.

“J. G. Watson & Geo. W. Joseph,
“Attorneys for Petitioner.”

“State of Oregon,
Multnomah County. } ss.

“I, Chung Chew, being first duly sworn, depose and say, that the foregoing petition is true of my own knowledge.

“Chung Chew.

Subscribed and sworn to before me this 30th day of January, 1894.

“Geo. W. P. Joseph
“Notary Public for the State of Oregon.”

That thereafter, on said 30th day of January, 1894, the Honorable C. B. Bellinger, Judge of said district court, for the district of Oregon, made and filed with the clerk of said court an order, ordering that the writ of habeas corpus issue as prayed for in said petition, and that it be made returnable before him, the said C. B. Bellinger, on January 31st, 1894, at 10 o'clock A. M.;

That thereafter, and on said 30th day of January, 1894, there was issued out of said district court, for the district of Oregon, a writ of habeas corpus, in the words and figures following, to-wit:

“In the District Court of the United States, for the District of Oregon.

“The President of the United States of America, to Pendergast, Master Steamer ‘Signal,’ Greeting:

“You are hereby commanded that you have the body of Lum Lin Ying by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said person above named shall be called or charged, before the Honorable Charles B. Bellinger, Judge of the district court of the United States, for the district of Oregon, at the United States courtroom, in the city of Portland, in said district, at 10 o'clock in the forenoon of Wednesday, the thirty-first day of January A. D. 1894, to do and receive what shall then and there be considered concerning the said person above named.

“And have you then and there this writ.

“Witness the Honorable Charles B. Bellinger, Judge of said court, this 30th day of January A. D. 1894.

[Seal]

“R. B. Lamson, Clerk.”

That thereafter, and on said 30th day of January, 1894, the United States marshal for said district of Oregon duly served the said writ upon the therein-named Pendergast, master of the steamship “Signal,” and, on the 31st day of January, 1894, made due return of said writ and of said service to the clerk of said court.

Thereafter, to-wit, on the 1st day of February, 1894, the matter of the said petition for the writ of habeas corpus came on regularly for hearing before said Judge, the Honorable C. B. Bellinger, the petitioner appearing by her counsel, Mr. B. B. Beckman, and G. W. P. Joseph, and the United States, intervening, by Mr. Daniel R. Murphy, United States Attorney for said district of Oregon, and the Judge, having heard the said petition, and the testimony and the arguments of counsel, took the matter of said pe-

“In the District Court of the United States, for the District of Oregon.

“In re Lum Lin Ying,	}	February 2,
“Petition for Writ of Habeas Corpus.		1894.
		No. 3666.

“Bellinger, J.:

“It is admitted that the person claiming to be the husband of the petitioner is a merchant doing business in this city. Is the petitioner his wife? He testified that she was betrothed to him at two years of age, and that six months ago the marriage was solemnized according to the laws of China. He further testified that he had never seen his wife until her arrival here. Upon this last statement I concluded to remand the petitioner without further inquiry, but deferred to the urgent request of her attorneys to be heard as to this alleged China marriage and as to the bona fides of the marriage transaction.

“The only authority cited as to what constitutes the solemnization of marriage under Chinese laws is an article in the *Encyclopedia Britannica*, by Professor R. K. Douglas, professor of Chinese in King’s College, London. According to this authority, marriage in China is an arrangement with which the parties most concerned have nothing to do. The duty of filial piety is said to be the final object of Chinese religious teaching, and, under its influence, parental will is a supreme authority from which there is no appeal. Marriage, therefore, is not the result of acquaintanceship. ‘The bridegroom rarely sees his betrothed until she has become his wife.’ The preliminar-

ies are entirely arranged by professional go-betweens with the parents and families of the respective parties. The correspondence between the two is in writing, and is of the briefest character. If the arrangement proceeds satisfactorily, the particulars of the engagement are committed to writing upon duplicate cards. These are sewn together and the ceremony is complete. The bride journeys to the home of her husband, who may then see her for the first time. This is the system under which the marriage relied upon in this case is claimed to have taken place, and is consistent with such marriage. The fact that such a marriage did take place, as testified to by the parties is not contradicted and is consistent with all the circumstances appearing in the case.

“If the parties were married according to the laws of China, such marriage is valid here.

“Parsons on Contracts says that ‘it seems to be generally admitted and is certainly a doctrine of English and American law that a marriage which is valid in the place where it is contracted is valid everywhere. The necessity and propriety of this rule are so obvious and so stringent that it can hardly be called in question.’ This rule is subject to the qualification that a marriage made elsewhere would not be acknowledged as valid in a State, the laws of which forbade it as incestuous. Meyer’s Federal Decisions says the general rule is undoubtedly that a marriage good by the law of the place of solemnization is good everywhere.

“At the time of the marriage in question in this case, the husband was domiciled in the United States. This raises a serious question as to whether China is the place

of solemnization of the marriage. While the place of solemnization governs, by what rule shall the place be determined when the parties are at the time within different jurisdictions? It is doubtful whether this is a China marriage. It is not enough, in my judgment, that such a marriage is valid under the laws of China. I am of opinion that it must not only be valid under such laws, but, to be valid elsewhere, must have been solemnized within the jurisdiction of those laws.

“The parties in this case appear to have acted with the utmost good faith. On the 7th of last October the husband consulted a firm of lawyers of high standing in the city, touching the right of his wife to land here. The subject was carefully considered by them. Acting on their advice, a certificate was prepared and forwarded to China, identifying the husband and setting forth that the petitioner was his wife, and that such certificate was intended to evidence her right to land here by virtue of such relation. Money was forwarded for the journey, which she undertook in pursuance of the advice given her husband here. There is no doubt as to this. I have no right to assume, upon the whispered suggestions made on the authority of some of her countrymen, that she is a prostitute. There is no testimony tending to prove anything of the kind. Nor is there anything in the case calculated to arouse a suspicion against her. If, as the testimony shows, she is a girl of 18 years of age, who has made this journey in good faith under the circumstances I have mentioned, she does not belong to any class of persons within the exclusion acts of congress, and her rejection would be a cruel injustice.

"I am aware that there is danger of imposition being practiced in cases like this, but that danger exists in all cases where Chinese persons are landed, and must continue to exist until exclusion is made absolute. The petitioner is discharged."

The defendant introduced and read on her behalf the following deposition of Poon See and G. W. P. Joseph, taken herein at her instance, under a commission therefor issued from this court, at Portland, Oregon, to Rowell B. Lamson, United States Commissioner, on the —— day of ——, 1895, to-wit:

POON SEE.

I am a merchant tailor, and reside in Portland, Oregon; have resided there for 18 years. I knew Chung Chew a year or two; he had a merchandise and grocery store, the name of the firm being Kwong Wah Lung, at Portland. As far as I know he was in business about two months after February, 1894. The first I saw of Lum Lin Ying was on the steamer "Signal," and I saw her when she was discharged by the United States Judge on a writ of habeas corpus. From what I learned, she is the wife of Chung Chew. She came from China to Portland as Chung Chew's wife, and when she was acquitted before the Court she went home with him. (Photograph shown witness.) That is her photograph. I learned her name as Lum Lin Ying when she was in court. That is a true picture of her at the time she was landed here.

Cross-Examination.

That is all the time I knew her, I saw her when she

came on the steamer, and the next time I saw her was in the court-room. I knew her because I knew Chung Chew. I learned that his wife came on the steamboat the day before I went down to see her. Chung Chew told me that she was his wife. I do not know such a person as Chung Shee. I don't know where Chung Chew is now. I don't know exactly that he had any partner; I didn't ask about him. I didn't know Lum Lin Ying before she landed. The first I knew her was when she came on the steamer and was discharged by the Court. I knew Chung Chew as a merchant at Portland about a couple of years before his wife came.

G. W. P. JOSEPH.

I am an attorney at law, residing at Portland, and was one of the attorneys for the petitioner, in the case of Lum Lin Ying on habeas corpus, in the district court of the United States, for the district of Oregon, filed in said court on or about January 30, 1894. I know Chung Chew; his business at that time was that of a merchant of the firm of Kwong Wah Lung or High Kee, number 64 Second street, Portland, Oregon. I believe he had been engaged in that business for several years prior to that time, he so informed me, and I was also similarly informed by Ah Chow, a member of that firm, I believe. I saw Lum Lin Ying in the district court on her application for discharge; she was discharged and went away with Chung Chew. Of my own knowledge I don't know of the relationship existing between Lum Lin Ying and Chung Chew, except that she was adjudged by the Court to be the wife of Chung Chew. I never saw her after that time.

The photograph handed me by the Commissioner is a photograph of Lum Lin Ying, as I believe.

Cross-Examination.

I saw the woman several times during the ten days preceding the hearing before Judge Bellinger, the first time being on the steamer "Signal;" I saw her there several times, also at the examination held before Collector Black, in which hearing I represented her and produced evidence of the relationship existing between herself and Chung Chew. I based my belief as to the relationship between them, upon the evidence produced before the Collector of Customs and before Judge Bellinger. I don't know Chung Shee at all. I do not know anything about whether she is the defendant herein or not. I have not seen any of the papers, but I recognize the photograph as that of Lum Lin Ying. I don't know whether she is the pretended wife of Chung Chew or not; all that I know is that Judge Bellinger discharged Lum Lin Ying upon the ground herein named, that she was the wife of Chung Chew. I don't know where Chung Chew is now. I do not think he was conducting the business alone when I knew him. I don't remember how many partners there were. The first time I ever had any information as to Lum Lin Ying being the wife of Chung Chew, is when I made the certificate upon which she came to this country, some time previous to this coming, in which, as I remember, Chung Chew made an affidavit that she was his wife.

The steamer "Signal" plies between Portland and British Columbia. After the discharge of Lum Lin Ying, I saw Chung Chew at 64 Second street.

WONG QUE, called, sworn and examined as a witness on behalf of the defendant, through an interpreter, testified as follows:

By Mr. Phibbs:

I now reside in Ferguson alley, in this city. I came here a little over three months ago from Portland, Oregon. My business is working. I lived in Portland fifteen or sixteen years. I know a Chinese merchant in Portland, Oregon, by the name of Chung Chew. I lived in Portland, Oregon, in the month of December, 19th year of Quong Sney.

Mr. Phibbs. I will show the date according to our calendar, by the interpreter.

Mr. Denis. I will state that it is January, 1894, or the beginning of February, 1894; they don't know it exactly, a difference of twenty-three or four days.

By the Witness. Chung Chew at that time was engaged in the grocery business on Second street, in Portland, Oregon; he was a merchant; the name of the store was Kwon Wah Lung High Kee. I saw the defendant, Lum Lin Ying, in the city of Portland, in the month of December, last year by the Chinese calendar, at the custom-house. That was the first time I saw her there. Afterwards I saw her in the store of Kwong Wah Lung High Kee, which is a grocery store. Chung Chew lived there at the time. The defendant was Chung Chew's wife, and they lived there at the store for five or six months. He had the consumption and was sick, so that he came to Los Angeles; I have never seen him since he came to Los Angeles.

WONG GUN, called, sworn and examined as a witness

on behalf of defendant, testified as follows, through an interpreter:

By Mr. Phibbs:

I lived in the city of Portland for about 11 years, and came to Los Angeles about November of last year. I saw this defendant in Kwong Wah Lung High Kee's, at 64 Second street.

Mr. Denis. I think we can shorten this examination very materially, if counsel cares to. I will admit that this woman was landed from the steamer "Signal," plying between Victoria, British Columbia, and Portland, Oregon, in the latter part of January, 1894, and that she has resided in the United States ever since.

Mr. Phibbs. And that she is the wife of ———

Mr. Denis. No, she pretended to be the wife of Chung Chew.

Mr. Phibbs. Will you stipulate that Chung Chew was a merchant at No. 64 Second street, Portland, Oregon?

Mr. Denis. I offer to admit that is the same Chinese woman who undertook to land from the vessel plying between Victoria, British Columbia, and Portland; that she claimed the right to land on the ground that she was the wife of a merchant in Portland, Oregon; that she was permitted to land on that ground. That she came to Los Angeles with this person, who claimed to be her husband. That she has been in the United States since January, 1894, and that this person was a merchant in Portland, Oregon. But I will not stipulate that she is a different woman from the one who attempted to land at San Francisco, nor that she was married to this man when she was two months old.

By the Court. And that she is the person referred to in that writ of habeas corpus, the record of which has been introduced?

Mr. Denis. Yes, everything except that she was married since she was two months old.

Mr. Phibbs. And that she is the same person mentioned by the witnesses in these depositions?

Mr. Denis. Yes, I will stipulate that.

By the Witness. The defendant and Chung Chew lived together as husband and wife in Portland, at the store of Kwong Wah Lung High Kee, which is the same store that Chung Chew was doing business at; they so lived together as husband and wife, in Portland, about four or five months, when Chung Chew, being sick with consumption, he and wife, this defendant, came to Los Angeles and changed climate.

Cross-Examination.

By Mr. Denis:

I know Chung Chew very well and saw him in Portland very often. I have lived in Portland 11 years and in the country 16 years, and am 29 years of age. In Portland my business has been cook for American families. I understand some English and understand a little of what you say, not much. I have never been in this courtroom before. I say that this woman lived with Chung Chew as his wife, because I know that in Portland they lived as man and wife. I know that Chung Chew sent for her, because I went to the store very often to patronize him, and I was well acquainted with him. I do not know anything about a tax paid by Chinese in British Columbia

at the port of Victoria. I came to Los Angeles the latter part of October, or the first part of November. I heard somebody say that Chung Chew was dead at that time. Since his death I heard that defendant stayed with a private family, but I did not see her.

DIEN LUM, called, sworn and examined on behalf of defendant, testified as follows, through an interpreter.

By Mr. Phibbs:

I am the wife of Wong Chung and live in Chinatown on Los Angeles street, over Quong Hing's store. My husband keeps a drug store. I have lived in Los Angeles about 20 years, and I know the defendant, Lum Lin Ying. I met her in June, last year, and have seen her since then. She and her husband came to my place and lived with me, I mean her husband Chung Chew. He lived with me until he was removed to the Chinese hospital, where he died, in Los Angeles. The defendant lived with him as his wife up to his death and has lived with me ever since. He died about the last part of October or the first part of November, last year. He left the defendant some money, and she has paid me every month since for her board and lodging. On the day of her arrest she was living with me, but at the particular time, was on a visit to some other lady; she was in the habit of going out to visit her lady friends.

Return of the United States marshal in and for the northern California, in the case testified to by plaintiff's witnesses herein, being in the matter of Chung Shee on habeas corpus, in the district court of the United States, in and for the northern district of California, received

and read in evidence as follows, indorsed upon order of remand by Hawley, Judge, directing the return of Chung Shee to steamship "Peru," to be hence taken to Hong Kong. Which return was filed August 10th, 1893, as follows:

"I hereby certify that I executed the within order on the 10th day of August, 1893, by placing the within named Chung Shee on board the steamship 'Rio De Janeiro,' bound for the port of Hong Kong.

Dated San Francisco, Cal., August 10th, 1893.

N. G. Long, United States Marshal,
By A. A. Wood, Deputy."

It is stipulated between counsel that there is a difference of from 23 to 26 days between the Chinese calendar and our calendar: thus, the month of December by the Chinese calendar would be the month of January following, within a few days by our calendar.

DEFENDANT called, sworn and examined, as a witness, in her own behalf.

By Mr. Phibbs:

My name is Lum Lin Ying. Chung Chew was my husband. I am 20 years of age, I lived in Portland, Oregon, several months in Kwong Wah Lung Kee's store. My husband, Chung Chew, kept that store. I was married to him in China, according to the Chinese custom, when I was 18 years old. I came to Los Angeles with him and lived with him at Chang's place, that is the place of the previous witness, Mrs. Wong Chung. My husband died about the latter part of October, last year, Chinese calendar, in Los Angeles, left me some money, and I am still

his widow. I never lived in San Francisco, and never went by the name of Chung Shee, nor do I know the name of Chung Shee. I was never deported from San Francisco, under the name of Chung Shee or any other name.

Cross-Examination.

Mr. Denis:

I do not know whose picture that is, I never saw it before.

Mr. Denis. I am going to offer that to the Court and will prove its possession in the collector of custom-house and where he got it from, it is a copy.

By the Court. Is this a photograph attached to the depositions?

Mr. Phibbs. It was taken by these gentlemen, we don't know where.

By the Witness. I don't know this gentleman (indicating Collector Wise), I never saw him before. I don't know this gentleman here (indicating Mr. Reardon), I don't know this gentleman here (indicating Mr. Huff), I never talked with him in Chinese at any place at all.

Here defendant rested.

JOHN H. WISE, recalled for the plaintiff:

By Mr Denis: (Producing a photograph of a Chinese woman).

I got that photograph from Judge Hornblower as the photograph of this woman and of the woman I denied admission to. It came from the court records in the Chung Shee case.

Cross-Examination.

By Mr. Phibbs:

I don't where Judge Hornblower got it from. It has not been in my possession since it was turned over to the Court, and I put my initials on it. It is in the same condition now, excepting the initials I put on it, there is no change at all. I don't know who put the inscription on the back of the photograph (referring to inscription thereon), reading as follows,

"Woo You, a merchant of the firm of Yee Chong & Co., Yee Chong, 739 Jackson St., S. F., Cal., she departed for China, June 14th, 1890, by Str. 'City of Pekin.'" (Photograph introduced in evidence by plaintiff.)

Thereupon, to-wit, on the said 26th day of September, 1895, at the court room of the district court of the United States, for this, the southern district of California, the cause was submitted to me, Olin Wellborn, Judge of said court, for my decision, on the evidence adduced and briefs thereafter to be filed, and thereafter, to-wit, on the second day of December, 1895, I as judge of said court, filed with the clerk my opinion herein, and ordered the judgment and order of the Commissioner, W. M. Van Dyke, to be reversed, and the defendant discharged, to which order the United States duly excepted.

Thereafter, to-wit, on the day of December, 1895, judgment accordingly was regularly entered herein, to which judgment the United States duly excepted.

The foregoing is a statement of all the proof made, and evidence adduced at, and proceedings had upon, the hearing and trial of this action before me, Olin Wellborn,

Judge of the District Court of the United States for the Southern District of California, on appeal from the order and judgment of the said Commissioner Wm. M. Van Dyke.

And, now, that the foregoing matters may be made a part of the record, the undersigned, judge of the said district court of the United States for the southern district of California, at the request of the plaintiff, the United States of America, doth hereby allow, settle and sign, within the time allowed by law and the order of the undersigned the foregoing bill of exceptions, and order the same to be filed.

OLIN WELLBORN,

District Judge.

[Endorsed]: No. 771. U. S. District Court, Southern District of California. United States of America vs. Chung Shee. Bill of Exceptions. Filed February 14th, 1896. E. H. Owen, Clerk.

In the District Court of the United States, for the Southern District of California.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHUNG SHEE,

Defendant.

Assignment of Errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assign-

ment of errors, which it avers occurred upon the trial of this cause, to-wit:

1. The Court erred in not holding that the order and decision of Judge Hawley, in the habeas corpus proceedings in the district court of the United States, for the northern district of California, directing the return of Chung Shee to steamship "Peru," to be hence taken to Hong Kong, China, was conclusive against the right of the defendant to be and to lawfully remain within the United States.

2. The Court erred in holding that Judge Bellinger's judgment and decision in the habeas corpus proceedings in the district court of the United States, for the district of Oregon, was a conclusive adjudication of the defendant's right to be and lawfully remain within the United States, and conclusive of that right in this action.

3. The Court erred in holding that said decision of Judge Bellinger was *res adjudicata* in this action.

4. The Court erred in holding that said decision of Judge Bellinger could not be attacked in this action for fraud, and erred in not holding that said decision was inoperative in this action as a conclusive or any determination of defendant's right to be and lawfully remain within the United States by reason of the fraud practiced by defendant upon Judge Bellinger and the officers of the United States Government.

5. The Court erred in not finding and holding that the defendant was an unregistered Chinese "laborer", unlawfully within the United States.

6. The Court erred in reversing the judgment and order of the Commissioner.

7. The Court erred in discharging the defendant from custody and in adjudging that she was lawfully entitled to be and remain within the United States.

GEORGE J. DENIS,
United States Attorney.

[Endorsed]: No. 771. U. S. District Court, Southern District of California. United States of America, vs. Chung Shee. Assignment of Errors. Filed February 26th, 1896. E. H. Owen, Clerk.

In the District Court of the United States, for the Southern District of California.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
CHUNG SHEE,
Defendant.

Petition for Writ of Error.

Comes now the United States of America, plaintiff herein, and says:

That on or about the 2nd day of December, 1895, this Court entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had thereunto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may

issue in its behalf to the United States Circuit Court of Appeals, for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

GEORGE J. DENIS,
United States Attorney.

[Endorsed]: No. 771. U. S. District Court, Southern District of California. United States of America, vs. Chung Shee. Petition for Writ of Error. Filed February 26th, 1896. E. H. Owen, Clerk.

In the District Court of the United States, for the Southern District of California.

UNITED STATES OF AMERICA,	}
Plaintiff,	
vs.	
CHUNG SHEE,	}
Defendant.	

Order Allowing Writ of Error.

This 26th day of February, 1896, came the plaintiff, by George J. Denis, Esq., United States Attorney for the Southern District of California, and filed herein and presented to the Court its petition, praying for the allowance of a writ of error intended to be urged by it, and praying also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered,

duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises;

On consideration whereof, the Court does hereby allow the writ of error prayed for.

OLIN WELLBORN,

District Judge.

[Endorsed]: No. 771. U. S. District Court, Southern District of California. United States of America, vs. Chung Shee. Order allowing Writ of Error. Filed February 26th, 1896. E. H. Owen, Clerk.

In the Circuit Court of Appeals for the United States, in and for the Ninth Circuit.

UNITED STATES OF AMERICA,	}
Plaintiff in Error,	
vs.	
LUM LIN YING, charged herein as	
Chung Shee,	}
Defendant in Error.	

Joinder in Error.

Now comes freely into Court, Lum Lin Ying, defendant in error, charged herein as Chung Shee, by Marble & Phibbs, her attorneys, and says:

That there is no error in the record and proceedings in said cause or in the giving of the judgment therein, and

she prays that the said Circuit Court of Appeals, before the Justice thereof, now here, may proceed to examine the record and proceedings aforesaid, as the matters assigned for error herein and that the judgment, aforesaid, in form, as aforesaid given, may be in all things affirmed and she be hence dismissed.

Dated Los Angeles, Cal., April 9th, 1896.

MARBLE & PHIBBS,
Attorneys for Defendant in Error.

[Endorsed]: In the Circuit Court of Appeals of the United States, in and for the Ninth Circuit. United States of America, Plaintiff in Error, vs. Lum Lin Ying, charged herein as Chung Shee, Defendant in Error. Joinder in Error. Filed April 14th, 1896. E. H. Owen, Clerk.

Received copy of the within this 14th day of April, 1896. F. G. Finlayson, Ass't U. S. Atty. Marble & Phibbs, Rooms 8 and 9, Lanfranco Block, 218 N. Main St., Los Angeles, Cal., Attorneys for Defendant in Error.

*In the District Court of the United States, in and for the
Southern District of California.*

THE UNITED STATES OF AMER-	}	No. 771.
ICA,		
Plaintiff in Error,		
vs.		
CHUNG SHEE,	}	
Defendant in Error.		

Clerk's Certificate.

I, E. H. Owen, clerk of the district court of the United States of America, in and for the southern district of California, do hereby certify the foregoing typewritten pages numbered from 1 to 66, inclusive, and composed in one volume, to be a full, true and correct copy of the record, pleadings and proceedings in the above-entitled cause, and that the same together constitute the return to the annexed writ of error.

I do further certify that the cost of the foregoing record is \$36.50 which has not been paid by plaintiff in error.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court, this 18th day of April, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twentieth.

[Seal]

E. H. OWEN,

Clerk of the United States District Court, for the Southern District of California.

[Endorsed]: No. 291. In the United States Circuit Court of Appeals, for the Ninth Circuit. Transcript of Record. Appeal from the United States District Court, Southern District of California. The United States of America, Plaintiff in Error, vs. Chung Shee, Defendant in Error.

Filed April 20, 1896.

F. D. MONCKTON,

Clerk.